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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT DUGGAN,

Defendant and Appellant.

2d Crim. No. B207201
(Super. Ct. No. F412063)
(San Luis Obispo County)

Robert Duggan appeals from an order committing him to the California Department of Mental Health for treatment after the trial court determined that he was a mentally disordered offender. (MDO; Pen. Code, § 2962 et seq.)¹ Appellant contends that the evidence does not support the finding that he represents a substantial danger of physical harm to others due to his mental disorder. (§ 2962, subd. (c).) We affirm.

Facts and Procedural History

In 2006, appellant was convicted of assault with a deadly weapon on his mother (§ 245, subd. (a)(1)), resisting an officer (§ 69), and elder abuse (§ 368, subd. (b)). Appellant was sentenced to three years eight months state prison.

¹ All statutory references are to the Penal Code.

On December 18, 2007, the Board of Prison Terms (BPT) determined that appellant was an MDO and committed him to Atascadero State Hospital for treatment. Appellant petitioned the superior court for trial and waived jury. (§ 2966.)

Evidence was received that appellant suffered from a severe mental disorder, "schizo-affective bipolar disorder" and alcohol abuse. He first received psychiatric care at age 26 and was 51 years old at time of trial.

Doctor Denise Kellaher, a forensic psychiatrist at Atascadero State Hospital opined that appellant met all the MDO criteria and that the mental disorder was a substantial cause of the committing offense. Appellant's symptoms include significant paranoid delusions, agitation, and decompensation. He believes that bikers chase him down, break into his home wherever he is, and inject him with a chemical that alters his mental status. Appellant also believes his food is laced with a substance that caused him to become an alcoholic at age three. Appellant does not trust the medications the doctors are giving him.

Although appellant was in clinical remission as of the BPT hearing date, he was not compliant with his medication during the 12 month period before the BPT hearing date. Doctor Kellaher stated the persecutory delusions get worse when appellant drinks and that he has limited insight about the importance of taking his medication. The doctor opined that the severe mental disorder and appellant's inability to follow and regularly maintain his medication regimen made him dangerous.

Dangerousness

The sole issue on appeal is whether the sixth MDO criteria was met, i.e., whether appellant poses a serious danger to others by reason of the mental disorder. (§ 2962, subd. (c).)² Present dangerousness is determined as of the date of the BPT

² The six criteria for an MDO commitment are: the prisoner (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) the severe mental disorder was a cause or an aggravating factor in the commission of the underlying offense; (4) the disorder is not in remission or capable of being kept in

hearing. (*People v. Miller* (1994) 25 Cal.App.4th 913, 916.) "The trier of fact is provided a snapshot view of the prisoner's mental status. Subsequent evidence concerning a change or improvement in the prisoner's mental condition is not relevant." (*People v. Tate* (1994) 29 Cal.App.4th 1678, 1682.)

Appellant complains that Doctor Kelleher misread the MDO statute and assessed present dangerousness when she interviewed appellant (February 2008) rather than as of the date of BPT hearing (December 2007). The alleged error was harmless. (See e.g., *People v. Bell* (1994) 30 Cal.App.4th 1705, 1711.)

Doctor Kellaher opined that appellant represented a substantial danger to others because appellant regularly strayed from his medication regimen. Within the year prior to the BPT hearing, appellant twice stopped taking his medication, and required enhanced care. When appellant did not take his medication, he became agitated and paranoid, and believed others wanted to kill him. Appellant's inability to regularly take his medication was a continuing condition that made him dangerous at the time of the BPT hearing and afterwards. Doctor Kellaher stated that without the medication, appellant was "more susceptible to reactivity, to paranoid misperception"

The fair import of the doctor's testimony is that the risk of harm to others existed because of appellant's inability to follow a regular medication regime. The condition existed before and after the BPT hearing, as manifested by the committing offense. Appellant stopped taking his medication, drank alcohol, and went barhopping with his mother. He took a taxi cab home but left his jacket in the taxi. When the cab driver found the jacket and returned it to the residence, appellant was holding a knife to his mother's throat. Appellant threatened to kill his mother, disobeyed police orders

remission without treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year prior to his parole; and (6) the prisoner poses a serious danger of physical harm to others by reason of the disorder. (§ 2962, subd. (c); *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2.)

to drop the knife, and was pepper sprayed. Appellant believed the cab driver and his mother had conspired to get him into trouble. He claimed the cab driver threatened him with a handgun and took his jacket on purpose.

Doctor Kellaher was asked whether appellant, because of his severe mental disorder, represented a substantial danger of physical harm to others *as of the BPT hearing date*. The doctor answered "Yes" and explained that the risk of harm to others stemmed from appellant's medication noncompliance. The paranoid delusions reappeared when appellant stopped taking his medication. "[W]hat makes these signs and symptoms more concerning is . . . the quality of his paranoid ideas, that everybody is conspiring against him, the doctors are perpetrating medication deception. These ideas make it more likely for him to stop taking medication . . . and drink, and perhaps not see his doctor. . . . And therefore, his risk for aggression would be increased based upon his past."

Appellant argues that he committed no acts of violence while at Atascadero State Hospital. Under the MDO statute, "'substantial danger of physical harm' does not require proof a recent overt act" of violence. (§ 2962, subd. (f); see *In re Qawi* (2004) 32 Cal.4th 1, 24.) "The purpose underlying the MDO is to protect the public by identifying those offenders who exhibit violence in their behavior and pose a danger to society. [Citation.]" (*People v. Dyer* (2002) 95 Cal.App.4th 448, 455.) Appellant has a long history of violence that includes arrests and convictions for vandalism, malicious mischief, fighting, drunk driving, hit and run, escape from jail with force or violence, battery, battery on emergency personnel and a police officer, multiple incidents of elder abuse, and assault with a deadly weapon on his mother.

In a sufficiency of the evidence appeal, we may not reweigh the evidence or determine the credibility of witnesses. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) Viewing the record in the light most favorable to the judgment, substantial evidence supports the finding that appellant meets all the MDO criteria

and, as of the date of the BPT hearing, represented a substantial danger of physical harm to others by reason of the mental disorder.

The judgment (MDO commitment order) is affirmed.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Jac A. Crawford, Judge
Superior Court County of San Luis Obispo

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